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COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 163rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 November 1993, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Supplementary report of Egypt (continued)

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* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.163 and the summary record of the third part (closed) of the meeting appears as document CAT/C/SR.163/Add.2.

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The public meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Supplementary report of Egypt (CAT/C/17/Add.11) (continued)

1. At the invitation of the Chairman, Mr. Zahran, Mr. Khalil, Mr. Fahmy, Mr. Bebars, Mr. Hammad, Mr. Sirry and Ms. Shahin (Egypt) took seats at the Committee table.

2. The CHAIRMAN proposed that Mr. Zahran, the Permanent Representative of Egypt, should reply to the questions asked by the members of the Committee on his country's report (CAT/C/17/Add.11).

3. Mr. ZAHRAN (Egypt) said that the reports of Amnesty International and the Egyptian Organization of Human Rights contained a great deal of inaccurate and incorrect information because unreliable sources had been used. He recalled that the Egyptian authorities were firmly resolved to cooperate with the Committee and that Egypt had ratified the Convention without formulating any reservations. The Convention was an integral part of Egyptian legislation and was in conformity with the Constitution in force. All the organs of the State and the courts of the country were therefore bound to respect and apply it. He did not agree with the comments by some members of the Committee that, in Egypt, there was a general tendency towards torture. Such an allegation was based on completely erroneous information. He also drew the attention of the members of the Committee to the oral introduction which he had given at the beginning of the consideration of the report and which should be regarded as an integral part of the report. The answers to some of the questions asked by the members of the Committee were to be found in the oral introduction.

4. He had provided the secretariat of the Committee with a list of tables and statistics on cases of torture and judgements handed down against police officers, financial compensation granted to the victims, inquiries conducted by the Department of Public Prosecutions into the complaints filed and prison inspections in 1992-1993. Many cases had been closed because it had been established that the plaintiffs had lied.

5. He was surprised by Mr. Sorensen's assertion that Denmark was contributing to the establishment in Egypt of a rehabilitation centre for victims of torture. There were many centres in Egypt to assist persons who had been disabled by war, with which a number of countries did in fact cooperate, but they were certainly not centres for victims of torture. Egypt respected its obligations under international human rights treaties and was willing to cooperate with all United Nations bodies. However, he emphasized that mere allegations reported in the press could not constitute tangible evidence on which to base the denunciation of a country.

6. Mr. KHALIL (Egypt) said that he would try to explain some aspects of his country's legal system. With regard to the definition of torture, he pointed out that, when the lawmakers had characterized torture as a crime, they had given no other definition of it than the act of inflicting suffering. The case law had thus been based on that general definition, which left it to the

courts to decide in each instance whether there had been any act of torture. According to that definition, the concept of torture encompassed all aspects of suffering inflicted in the past, present or future; it covered psychological and mental torture and physical torture; and it was not necessary for torture to have left any marks on the body of the victim. The lawmakers had not excluded any possible form of torture, whatever the intensity of the suffering inflicted. Following that principle, the case law considered that even the threat of torture was torture, as was the mere fact of tying the victim's hands or feet. Preparations for torture, even if torture did not actually occur, as well as intent to torture, even if it had no effect, were regarded as completed acts of torture.

7. Since Egypt had acceded to the Convention, the definition of torture contained in article 1 could be invoked in the Egyptian courts, so that, if there were any gaps in the legislation, the provisions of the Convention were there to fill them, and vice versa. The Convention was henceforth part of Egyptian legislation and was self-executing in Egypt, as the Court of Cassation had recently confirmed in several judgements.

8. In order to combat the scourge of terrorism, which was so seriously undermining Egyptian society and which was spreading almost everywhere in the world, Egypt had had to adopt legislative measures and a law had been enacted for that purpose in July 1992. Instead of listing acts, it gave a general definition of terrorism; it stipulated that any use of force, violence, threats or intimidation to carry out, individually or collectively, a criminal plan to disturb public order or security was terrorism. More specifically, acts were regarded as terrorism if they were committed against persons in order to terrorize them or to endanger their lives, freedom or safety or to damage the environment, public buildings and property, to occupy or take control of them or to obstruct the work of the authorities, the functioning of places of worship or educational establishments or the application of the Constitution and the laws. Therefore, the definition was above all a comprehensive one; the lawmakers then stipulated that certain acts and, in particular, those punishable by law - such as striking someone - were regarded as more serious if they had terrorist aims and were to be punished much more severely. Thus, in order to define the crime of terrorism, the lawmakers had taken into consideration the act, on the one hand, and its circumstances and aims, on the other.

9. Since the recent increase in terrorist acts, any persons who set up groups or associations aimed at obstructing the application of the law and the Constitution or the functioning of society and at violating individual freedoms and all the rights and freedoms guaranteed by the Constitution were liable to imprisonment. One article of the law on terrorism characterized the establishment of such groups or associations as a terrorist act. The lawmakers had thus wanted to protect public and individual rights and freedoms by characterizing any violation of them as a crime within the meaning of article 57 of the Penal Code. Moreover, those crimes were not subject to any statute of limitations. Similarly, in order to protect the freedom of choice of all persons, it was provided that anyone who resorted to terrorism in order to coerce another to join a terrorist association was liable to a penalty of hard labour. The penalty was much harsher if anyone was killed and if such acts became more widespread.

10. The Egyptian military courts did not operate only while a state of emergency was in force, since they were permanent courts which tried offences, including ordinary law offences, committed by members of the armed forces, as well as offences committed against the armed forces, their institutions and their buildings. The military courts were composed of specialized judges, holders of law degrees, who had received special training within the framework of the armed forces; they were appointed and transferred by a special commission. Those permanent courts operated in the same way as courts usually did. A court consisting of three judges was responsible for trying serious offences for which the penalty was a prison sentence, whereas the less serious cases were dealt with by a single judge. The military courts were bound to respect the law and all the legally prescribed safeguards and to enforce them. Those courts were based on the provisions of the Penal Code And could not impose special penalties. Their decisions were subject to two levels of supervision. First of all, one division was responsible for upholding the judgement handed down and the person on whom it was passed could submit an appeal either against the judgement or against the penalty. Once the judgement had been upheld, the person concerned could appeal on the same grounds as an ordinary convict to the Court of Cassation because there had been either an error in the application of the law or a procedural irregularity or a faulty interpretation. In such a case, the trial was reviewed. To date, the military courts had tried only cases involving terrorism. In that context, it should be noted that, at all stages of the investigation, the military court was required to ensure strict respect for the rights of the defence.

11. In Egypt, as in many other countries, the legislation on the state of emergency had been promulgated before the proclamation of a state of emergency. Under that legislation, the President of the Republic must, in order to declare a state of emergency, refer the matter to the People's Assembly, which examined the grounds justifying the proclamation of the state of emergency before ratifying it. It was also the People's Assembly that evaluated the need to terminate or extend the state of emergency and the Head of State could not go against its decision.

12. The powers granted under the law on the state of emergency were specified by that law and could not be modified by anyone without the approval of the People's Assembly. When the state of emergency was proclaimed, the dates when it started and ended had to be specified, as did the procedures or measures that would be in force during that period and the powers which derived from them. The law on the state of emergency authorized arrests when security was threatened; such measures could be adopted only in the event of absolute necessity and taking into account the seriousness of the danger.

13. There were guarantees to protect persons covered by the measures adopted under the state of emergency. Thus, any person placed in detention had to be informed of the reasons for his arrest and be able to contact a person of his choosing and to have the assistance of a lawyer; that provision had been added to the law on the state of emergency in 1982, in view of Egypt's accession to the Convention. Furthermore, any person affected by a measure adopted during the state of emergency, or any of his relatives, could submit an appeal to a

higher state security court, his appeal had to be dealt with within a specified time and, if it was dismissed, the person concerned was entitled to lodge a new appeal after a specified period.

14. The higher State security courts set up under the state of emergency were presided over by three justices chosen at the highest level of the judiciary, who had the rank of judge of the court of appeal or president of the court of appeal. The Constitutional Court took the view that those high courts, which were emergency courts, should be composed of judges who had jurisdiction in their own courts for the same type of cases as those which they would be called upon to try, not of persons specially appointed for that purpose. The President of the Republic could appoint only two officials as additional members of those courts, with the result that those officials could not constitute a majority, since there were three judges of the court. The lower State security courts were also presided over by judges who had to try similar cases in their own courts. The judgements handed down by the lower State security courts were subject to approval: a commission of judges who were also competent in that type of case determined that the judgements were valid and considered all the appeals against a judgement; it then transmitted the judgements to the President of the Republic for his approval, accompanied by a substantiated memorandum if it was a criminal case. The President of the Republic could approve a judgement, reduce a penalty or suspend its enforcement or even ask for the review of a case; but he could not change the judgement or make the penalty heavier. If a case was reviewed, the judgement handed down by another division of the court would be final. That phase of the approval of judgements was an important stage in the proceedings and was equivalent to an appeal.

15. The Egyptian judiciary was absolutely independent. The members of the judiciary and the Department of Public Prosecutions were not subject to dismissal and all questions concerning them were dealt with by the Higher Council of the Judiciary, composed of the President of the Court of Cassation, its two most senior judges, the Attorney-General and the most senior presidents of the three courts of appeal or, in other words, the most outstanding members of the judiciary. The Council dealt in particular with the appointment, promotion and transfer of the members of the judiciary and the Department of Public Prosecutions, as well as with all disciplinary measures affecting them. Their appointments were simply endorsed by a decree of the President of the Republic. Only the civil divisions of the Court of Cassation were competent to hear petitions submitted by those judges for the annulment of administrative decisions concerning them.

16. The Egyptian judicial system consisted of two types of courts: civil and criminal. In the civil courts, there were two levels. In first instance, a judge handed down a first judgement which could be reviewed by a court composed of three judges. A final appeal could be submitted to a court of appeal composed of three judges. In the criminal courts, for a simple offence, one judge sat in first instance and an appeal could be submitted against his judgement to a court composed of three judges. When a prison sentence was imposed in first instance for a serious crime, the case could be reviewed by the court of appeal, composed of three senior judges whose decision would be final. The highest court was the Court of Cassation.

17. With regard to the question of the compensation of the victims, he said that the injured parties could institute civil proceedings, but could also institute criminal proceedings. The heirs of a person who had been tortured could also institute civil proceedings and obtain compensation for the loss of the deceased person and for the torture inflicted. A civil action brought on the basis of an offence of torture was not subject to the statute of limitations. Criminal actions could be brought directly against the law enforcement officials concerned. The Court of Cassation had recently decided that the injured party could even go so far as to invoke the responsibility of the President of the Republic in order to claim compensation.

18. Mr. FAHMY (Egypt), replying to questions relating to the role and functions of the Department of Public Prosecutions, said that the Department was an essential part of the judiciary; like other judges, its members enjoyed immunity and were not subject to dismissal. Contrary to what happened in most countries of the world, the Department carried out the dual functions of judicial investigation and indictment. It was headed by an Attorney-General assisted by a Public Prosecutor and some deputies. The members of the Department of Public Prosecutions were selected from among the best students in the law faculties and legal institutes. As soon as they had been appointed, they underwent a six-month period of training in the divisions of the Department. In its role of investigatory body, it examined all the information brought to its attention (information from individuals or police reports) and conducted investigations on that basis. A court could also conduct an investigation, but that of the Department took precedence. Except in cases of flagrante delicto, the Department issued an arrest warrant prior to any arrest or detention. The persons arrested had to be brought before the Department within 24 hours; that meant that the police could not legally detain private individuals for more than 24 hours. From the beginning of the investigation proceedings, the Department ensured that the person arrested was given the benefit of all the necessary guarantees for his defence (access to a lawyer, knowledge of the charges and the penalty, etc.); a member of the Department met the accused person, so that, if there were any marks of physical brutality, they could be recorded. The Department could keep the accused person in detention for four days - or for eight days if the person was suspected of having committed torture - after having heard him and then it had to bring him before a judge, who could take the decision to extend the period of detention up to a maximum of six months. Once that period had passed, the accused person had to be released or brought before a court.

19. The Department of Public Prosecutions also ensured the supervision of prison conditions and procedures. Its members paid periodic visits to prisons and places of detention. During those visits, they checked the records in order to ensure that the names of all the persons who were in fact detained appeared in them and that no one was illegally or unlawfully detained. During those visits, the members of the Department of Public Prosecutions also took note of the detainees' complaints and, if necessary, took the decision to institute an inquiry.

20. The answer to the question by the members of the Committee whether any persons were detained in places other than prisons was negative. According to the law, no premises that were not prisons, for example, the premises of the Criminal Investigation Department, could serve as places of detention.

Following complaints made in 1992 that detainees were kept in places other than prisons, the Department of Public Prosecutions had opened an inquiry and had gone immediately to the premises of the Criminal Investigation Department that were supposed to be serving as places of detention and had been able to ascertain that that was not the case.

21. With regard to the activities of the Department of Public Prosecutions in respect of offences involving torture, he pointed out that the Attorney-General was determined to process the files on cases of torture more promptly; to that end, he had decided, among other things, to set up an office with special responsibility for investigating cases of torture.

22. Mr. HAMMAD (Egypt) said that he wanted to allay the concerns which he thought he had detected in the statements of the members of the Committee and to rectify and clarify Egypt's image, which had been somewhat tarnished by exaggerations and provocations. The Ministry of the Interior had set up specific mechanisms to ensure respect for human rights and to prove that it was determined to comply with the constitutional system and international instruments. Consequently, police officers who did not obey the law and who committed excesses were liable to be censured and punished by a disciplinary body in the Ministry of the Interior. They could be tried and sentenced to imprisonment. The executive power did not close its eyes to the practice of torture and was uncompromising in prosecuting those responsible. It could not be said that the practice of torture was systematic.

23. In order to avoid abuses, the Ministry of the Interior periodically circulated instructions to officials under its administration reminding them of the need to respect the legal procedures when holding persons in detention. Seminars were organized to make the officials concerned more conversant with Egypt's laws and with international law. Some of those seminars were the result of cooperation between the Ministry of Foreign Affairs and the United Nations Centre for Human Rights. Non-governmental organizations such as Amnesty International and Middle East Watch had been able to visit prisons and disciplinary establishments, as well as the offices of the Ministry of the Interior. Representatives of Amnesty International had met senior officials of the Ministry of the Interior and the Ministry of Justice and representatives of the Department of Public Prosecutions. Human rights teaching formed part of the training given in police schools. The Ministry of the Interior cooperated with several international organizations to promote human rights values within the police. Egypt's image should therefore also reflect that positive action taken on behalf of human rights.

24. One of the most serious problems Egypt faced was that of terrorist acts committed by extremists and subversive elements. The allegations of torture submitted came primarily from those elements. It must be seen that what was at work in Egypt was an elaborate terrorist plan aimed at nothing less than the destruction of the civilization and democracy that had existed in Egypt for several thousand years. The plan had numerous ramifications and it was being carried out, on the one hand, by terrorist agents living abroad who sent their instructions to networks inside the country to incite them, for example, to kill civilians, tourists and police officers; and, on the other, by the members of those networks living in the country, who carried out the instructions transmitted after having received extensive training abroad.

The police were fighting the terrorists with legal measures, but, in the majority of cases, it was very difficult to avoid direct confrontation between the security forces and the criminals. Obviously, the terrorists did not give themselves up to the police and the policemen often had to risk their lives to try and arrest them. The victims were not only in the terrorists' camp. It was unfortunate that the terrorists, who defied the law, brought claims of violations of their human rights to sympathetic non-governmental organizations, thus blurring the image of the true situation in Egypt.

25. In order to reassure the members of the Committee about the situation in prisons, he stressed that such establishments were subject to regular and rigorous inspection visits. In the first place, there were administrative or technical inspections carried out by inspectors from the Ministry of the Interior, who submitted a report to the Director General of Prisons. In the second place, when judges visited the prisons, the prison warder had to communicate their comments to the Director General of Prisons. In the third place, the prisons were subject to a periodical judicial inspection by the members of the Department of Public Prosecutions, as well as to spot inspections whenever there was a complaint of an illegal detention or of an offence committed by a detainee. The prison authorities also carried out inspections and there had been 132 inspections in 1992 and 120 so far in 1993.

26. Regarding the question of extradition, he pointed out that Egypt took in many political refugees, especially persons connected with national liberation movements. He emphasized that extradition was applicable only to foreigners and that the principle in force in Egypt was that of the sovereignty of the judiciary. Persons who were liable to be extradited or who were subject to an expulsion measure could appeal to the legal or administrative courts.

27. Referring to Mr. Ben Ammar's proposal that seminars should be organized for Egyptian police officers and those of other countries, he pointed out that the Egyptian Ministry of the Interior was cooperating with other countries and, in particular, with the United Kingdom, the United States, Italy, France and Japan to improve the human rights situation. A meeting was currently taking place in Egypt between the Swedish police chief and Egyptian police officers.

28. Mr. ZAHRAN (Egypt) said he hoped that the replies provided by his delegation had been clear. The Egyptian Government had made a commitment to respect the Convention and would continue to work to implement it in good faith. He also urged the members of the Committee to be impartial in their conclusions.

29. The CHAIRMAN thanked the Egyptian delegation for having answered the Committee's questions.

30. The Egyptian delegation withdrew.

The public meeting rose at 5.20 p.m.